



State Implementation Matrix: Food Safety Modernization Act Produce Safety Rule

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Agenda:

1. Research Process
2. National Trends
3. Northeast State Implementation
4. Common Variations in State Law



Research Process

- Searching for statutes and regulations in state-enforced, non-credentialed states
- Direct outreach to state departments of agriculture
- Continuous research



National Trends

- FDA Inspections/Enforcement: IL, ND, OR, SD, WY
- Credentialed System vs. State Statutes/Regulations Enacted
 - Fairly even split between states
 - Some states are acting under a credentialed system for now, but plan on enacting their own statutes
- A few states - little/no information found
- Common variations among state statutes



Northeast Implementation

No NE states are FDA enforced

Credentialed States:

- Maine (statute affirming credential status, 7 M.R.S.A. § 286 (2017))
- Massachusetts (statute affirming credential status, M.G.L.A 128 § 124 (2018)) (?)
- New Jersey
- Pennsylvania

Statutes/Regulations: Connecticut, Delaware (?), Maryland, New Hampshire, New York, Rhode Island, Vermont

Enforcing Agencies: Department/Division of Agriculture, or equivalent



Connecticut

C.G.S.A. § 22-39g. Food Safety Modernization Act. Requirements for produce farms. Enforcement. Inspections. Inspection certificate. Voluntary submission to inspection. Orders. Emergency orders. Recordkeeping. Regulations. (2017)

- Department may enforce the federal standards, **as amended**
- Produce farm inspections: comply with federal requirements; reasonable hour; **may** issue inspection certificate
- May inspect a farm **not** required to comply with the federal act, upon request of the owner/operator
- Recordkeeping required by any farm subject to the federal act **OR** any owner/operator who requests an inspection
- Department may issue enforcement orders (not exhaustive): embargo, destruction, quarantine, and release of produce



Delaware

3 Del. C. § 101. Powers (2018). Department of Agriculture may ... (1) abate, suppress, eradicate, and prevent...infectious and injuriously dangerous diseases of [food]; (3) make and adopt rules; (6) collect samples

3 Del. Admin. Code 302.

- Establishes procedures for:
 - Registration. Required for all produce farms within Delaware.
 - Inspections. **Any produce farm** or facility; **any time**; Inspectional Report form **will be** given
 - Enforcement Actions. Dep't may seize, take possession of, condemn, destroy, or require destruction of covered produce in violation of Federal Rule; objectionable conditions must be reported to FDA.
 - Violations and Hearing Procedures
 - Appeals
 - Civil penalties. \$1000-\$5000 for each count.



Maryland - “[S]hall conform with the federal standards”

Md. Agric. § 16-101-111. Maryland Produce Safety Program (2019).

- Records: **Fully covered and QE farms.** Records are confidential with exceptions.
- Inspections: fully covered, QE, and exempt farms; reasonable time; may issue a written or printed stop-sale order to a farm in violation
- **May adopt** regulations
- Action for an injunction to enforce or prevent a violation
- May detain covered produce found in violation
- Petition for condemnation may be filed by the Secretary
- Subpoenas and administrative search warrants
- Penalties and fines



New Hampshire - Incorporated by reference

N.H. Rev. Stat. 426-A:1-A:6. Produce Safety (2018).

- FSMA PSR incorporated by reference and **any subsequent amendments**
- Inspections: **any produce farm**; reasonable hours; determine compliance with federal standards & state rules; **may issue certificate**
- Maintain records required by the federal rule and state rules
- Commissioner shall adopt rules (below)

Chapter Agr 3900. Produce Safety Farm Inspections

- Owner/operator of a farm shall comply with the federal rule
- Inspections: **routine inspections** shall be conducted (every 3 yrs); farms conducting covered activity
- Record keeping: adhere to federal rule



New York - Adopts the federal rule (exceptions)

1 CRR-NY 273.1. Standards (2017).

- Adopts the federal rule

- Except: the Commissioner will not determine the eligibility of a farm or a QE and does not adopt parts E (agricultural water), P (variances), Q (compliance and enforcement), and R (withdrawal of qualified exemption)

Agriculture and Markets Law, § 214-B. Regulations. Enact legislation uniform with the federal act and all acts amendatory thereof and supplemental thereto; commissioner is authorized to adopt regulations



Rhode Island - Adopts the federal rule

RI ST § 2-1-10(b). Inspection Powers (2017). The director shall enforce the FSMA as it pertains to commercial growers of fruits and vegetables

250-RICR-40-00-2. Produce Safety Rule (2019). Adopt minimum standards established by the federal rule by reference, **not including further editions or amendments** to the extent the provisions are not inconsistent with state regulations.



Vermont

6 V.S.A. §§ 851-857. Produce Inspection (2016).

- Secretary may enforce the federal rule and state rules
- Inspections: produce farm; reasonable hours; to ensure compliance
- Maintain records required by FSMA, FSMA Rules, and state rules
- Secretary may adopt rules
- When secretary finds a violation, the Secretary may issue a written warning
- Enforcement actions: cease and desist; administrative order (stop sale, recall, embargo, destruction, quarantine, and release of produce); mandatory corrective actions; seek administrative or civil penalties
- Appeals to the Civil Division of the Superior Court; within 30 days of final decision



Common Variations in State Law:

1. Inspections:

- Department **may or shall** enter and inspect just farms conducting a covered activity or ANY produce farms? Can non-covered farms request an inspection?
- Enter at a reasonable time or any time?
- Inspection reports: required or voluntary?
- Regular inspections specified?

2. **Penalties and fines:** Monetary amounts may vary. No NE states mentioned criminal liability in their statutes, only civil penalties.

3. **Records:** In CT non-covered farms are required to keep records if the owner/operator requests an inspection.

3. Commissioner/Secretary/State **shall or may adopt rules?**

4. Subsequent **amendments to or editions of** the Federal Rule also adopted?